IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

W.P.(C).No. 34744 of 2004(J)

OS.881/2000 of PRL.SUB COURT,THRISSUR

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PETITIONER:

INVEST CHITS & GENERAL FINANCE (P)LTD.,
REP. BY ITS MANAGING DIRECTOR, SIVANANDAN, OORAKAM VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENTS:

KUNJI KAMMU, S/O.KUHAMMED HAJI,
THALIKULAM HOUSE, EDATHURUTHY VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.BALAKRISHNAN GOPINATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the written statement filed by the respondent in O.S.No.881/2000 before the Sub Court, Thrissur.

Ext.P2: True copy of the judgment dated 22-10-2003 in O.S.No.881/2000 of the Sub Court, Thrissur.

Ext.P3: True copy of the complaint in S.T.No.3057/2004 pending before the J.F.C.M.No.1, Thrissur.

Ext.P4: True copy of the I.A.No.406/2004 in O.S.881/2000 filed by the respondent before the Sub Court, Thrissur.

Ext.P5: True copy of I.A.No.409/2004 in O.S.881/2000 by the respondent before the Sub Court, Thrissur.

Ext.P6: True copy of the objection filed by the petitioner against Ext.P4.

Ext.P7: True copy of the order in I.A.No.406/2004 dated 4-9-04 of Sub Court, Thrissur.

Ext.P8: True copy of the order in I.A.No.409/2004 dated 4-9-2004 of Sub Court, Thrissur.

// True copy //

P.A. to Judge

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M.N.KRISHNAN, J.

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W.P.(C)NO.34744 OF 2004

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Dated this the 30th day of January 2007

JUDGMENT

This writ petition is filed to quash Exts.P7 and P8 orders. The plaintiff in O.S.881/2000 is the writ petitioner. As the defendants remained ex-parte in the suit on satisfaction the court granted a decree in favour of the plaintiff. The first defendant moved an application I.A.406/2004 and another application I.A.409/2004 to set aside the ex-parte decree after condoning delay of 60 days in filing the application. A perusal of the affidavit filed in support of the petition revealed that at the time when the case was listed, the first defendant was living abroad and he could not contact his lawyer. There was also a delay of 60 days in filing the application for condoning the delay in filing the application for setting aside ex-parte decree. Trial court on consideration of the entire materials granted the prayer of the defendants. It is a settled principle that one should not be harsh on a petitioner and deny him the opportunity of hearing in court merely because of some negligence. Such a drastic step should be taken only where the degree of negligence is such that

cannot be condoned. In the case before me, the defendants had satisfied the conscience of the court regarding the reason for delay and also for the reason for non appearance before the court when the suit was listed. There is no grave misconduct or gross negligence. Therefore, the court was perfectly justified in setting aside the ex-parte order after condoning the delay. Therefore, this writ petition fails and it is dismissed.

M.N.KRISHNAN, JUDGE

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